

FILING AN APPEAL

A CITIZEN'S GUIDE TO FILING AN APPEAL IN THE WISCONSIN COURT OF APPEALS

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I. INTRODUCTION

This handbook is a simplified guide to the Wisconsin Rules of Appellate Procedure of the Wisconsin Court of Appeals, intended primarily for laypersons and attorneys with little or no appellate experience. It is not intended to replace the Rules and should not be cited as legal authority. Litigants must rely on the Rules and case law as legal authority. The Rules of Appellate Procedure are contained in chapters 808 and 809 of the statutes. Litigants may also want to consult the court's Internal Operating Procedures (IOPs), which are published periodically. This handbook reflects the rules and case law as they exist on **January 1, 2006**. The rules and case law are always subject to change, and should be consulted for changes. This handbook is available in an alternative format, upon request.

II. FILING OF PAPERS

A. GENERAL RULE

Except for briefs, all papers are considered "filed" when they are received by the clerk. Rule 809.80(3)(a).

All documents submitted to the court must be filed with:

By mail: Clerk, Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

Delivery: Clerk, Court of Appeals
110 E. Main St., Suite 215
Madison, WI 53703

A copy of all documents filed with the court must be served (mailed or hand-delivered) on all other parties to the appeal. All papers filed with the court must be 8½ x 11 inches. Rule 809.81(1), Stats.

B. FILING BY FACSIMILE

Any transmission must include a cover sheet that states the case number, name and telephone number of the party transmitting the document, and the total number of pages being transmitted. The party transmitting the facsimile document is solely responsible for ensuring its timely and complete receipt and assumes any risks inherent in such transmission. Documents completing transmission after 5:00 p.m. will be considered “filed” the next business day. Sec. 801.16(2)(c), Stats.

A brief cannot be filed by facsimile. The most common type of paper that may be filed by facsimile is a motion. When filing a motion by facsimile, you must send the required number of copies of the motion by facsimile. You should **not** also mail the motion to the clerk. The Clerk’s Office facsimile number is (608) 267-0640.

III. WHAT IS AN APPEAL

An appeal is a review of what happened in the circuit court to determine whether error occurred and, if so, whether the appellant¹ is entitled to relief. An appeal is not a new trial. You cannot present evidence, call witnesses or conduct discovery in an appeal. The court of appeals decides an appeal strictly on the basis of the circuit court record, briefs and occasionally oral argument by the parties. Generally, a claim of error must have been brought to the circuit court judge's attention before the court of appeals will review it.

IV. WHEN CAN YOU APPEAL

A. APPEAL AS OF RIGHT

You have a right to appeal from a final judgment or final order of a circuit court. A judgment or order is final if it "disposes of the entire matter in litigation as to one or more of the parties." Sec. 808.03(1), Stats. If the order or judgment decides only some of the issues or claims but not all, it is not final. However, if it decides all of the issues as to one party, it is final as to that party and appealable only by or against that party.² In eviction actions, however, an order for judgment for restitution of the premises is appealable as a matter of right even though a claim for

¹ An "appellant" is the party who files a notice of appeal. A "respondent" is the party adverse to the appellant. (The term "appellee" is not used.)

² *Culbert v. Young*, 140 Wis. 2d 821, 827, 412 N.W.2d 551, 554 (Ct. App. 1987).

monetary damages or any other claim may be unresolved. Sec. 799.445, Stats.

In addition, the judgment or order must have been intended to be the final document in litigation.³ A judgment or order is final if the circuit court decides all substantive issues as to one or more of the parties. If the judgment or order meets that test, the circuit court intends the judgment or order to be the final document for purposes of appeal.⁴

The order or judgment must be in writing before an appellate court has jurisdiction to review it.⁵ An appeal from an oral judgment or order will be dismissed.

The judgment or order also must have been “entered” (that is, filed in the office of the clerk of the circuit court) before the court has jurisdiction to review it.⁶ The date of entry is the date the document is actually filed with the clerk of court’s office. An appeal filed before the judgment/order has been entered may be dismissed for lack of jurisdiction. However, if the appellate record shows that the judgment/order appealed from was entered after the notice of appeal was filed, the court will construe the notice of appeal as being filed after the entry of the

³ *Radoff v. Red Owl Stores, Inc.*, 109 Wis. 2d 490, 494, 326 N.W.2d 240, 241-42 (1982).

⁴ *Harder v. Pfitzinger*, 2004 WI 102, ¶15, 274 Wis. 2d 324, 682 N.W.2d 398.

⁵ *State v. Malone*, 136 Wis. 2d 250, 257, 401 N.W.2d 563, 566 (1987).

⁶ *Ramsthal Adv. Agency v. Energy Miser, Inc.*, 90 Wis. 2d 74, 75-76, 279 N.W.2d 491, 492 (Ct. App. 1979).

judgment/order and on the same day of entry. Sec. 808.04(8), Stats.

An exception to the rule that the judgment or order must be in writing and entered exists for final dispositions in small claims, traffic regulation or municipal ordinance violation cases prosecuted in circuit court. An appeal in one of these types of cases may be taken from a disposition of the case recorded in the circuit court clerk's docket entries. Sec. 808.03(1), Stats. The time for appealing in one of those cases begins to run when the circuit court clerk makes the docket entry. If the circuit court judge later signs a separate judgment or order, the appeal times do not restart.⁷

B. PERMISSIVE APPEAL

If you want review of a nonfinal judgment or order, you must petition the court for permission to appeal. The nonfinal judgment or order must be in writing and entered and the petition must be filed with the court of appeals within 14 days of entry of the nonfinal judgment or order. Rule 809.50(1), Stats.

V. TIME LIMITS FOR APPEAL

A. CIVIL APPEALS

The filing of a timely notice of appeal is necessary to give the court of appeals jurisdiction. Rule 809.10(1)(e), Stats. The time limits depend on the type of case being appealed. An appeal in a civil case must be filed within 90 days of entry of the judgment or order appealed from. However, any party may shorten the appeal

⁷ *City of Sheboygan v. Flores*, 229 Wis. 2d 242, 248, 598 N.W.2d 307 (Ct. App. 1999)

time to 45 days by giving the other party written notice of entry of judgment or order within 21 days of entry. Sec. 808.04(1), Stats. Written notice of entry of judgment or order is a formal, captioned and signed notice stating the correct date of entry of judgment or order. It must be served on the opposing parties within 21 days of entry and filed with the clerk of the circuit court within a reasonable period of time.⁸ A notice of entry of judgment or order containing the wrong date of entry will not shorten the appeal time to 45 days. Call the clerk of circuit court to verify the date of entry (it is not necessarily the day the judge signs the judgment or order). A notice of entry of judgment or order will not shorten the appeal time if the notice is sent to an incorrect address.⁹

The notice of appeal is “filed” the day it is actually received in the clerk of circuit court’s office, not the day it is mailed.

A cross-appeal must be filed within the later of the period established for filing the notice of appeal or 30 days after the filing of the notice of appeal. Rule 809.10(2)(b), Stats.

The time to file a civil appeal or cross-appeal cannot be extended. Rule 809.82(2)(b), Stats.

An appeal under sec. 227.60 (attack on state law in federal court) or 799.445

⁸ *In re Marriage of Soquet v. Soquet*, 117 Wis. 2d 553, 561, 345 N.W.2d 401, 405 (1984).

⁹ *Nichols v. Conlin*, 198 Wis. 2d 287, 290, 542 N.W.2d 194, 195-96 (Ct. App. 1995).

(eviction actions) must be filed within 15 days of entry of the judgment or order. An appeal seeking review of a judgment or order entered under sec. 19.356 (governing the release of certain governmental records) must be filed within 20 days of entry of the judgment or order. Sec. 808.04(1m).

B. CRIMINAL AND CH. 48, 51, 55 and 938

Appeals in criminal cases or cases arising under ch. 48, the Children's Code, ch. 51, the Mental Health Act, ch. 55, the Protective Placement chapter, or ch. 938, the Juvenile Justice Code, are governed by Rule 809.30, except as provided below.

(1) A person must file with the circuit court and serve on the prosecutor and any other party a "notice of intent to pursue postconviction or postdisposition relief" within 20 days of sentencing in a criminal case or the adjudication in a ch. 48, 51, 55 or 938 case. Rule 809.30(2)(b), Stats.

(2) Within 30 days of receipt in their office of the notice of intent, the state public defender shall appoint counsel, if the person is eligible, and request transcripts. A person who does not ask to be represented by the public defender must request transcripts within 30 days of the filing of the notice of intent. A person who is denied representation by the state public defender must request transcripts within 90 days of the filing of the notice of intent. Rule 809.30(2)(e), (f), Stats.

(3) The court reporter must file the transcript and serve a copy on the person within 60 days after the request. Rule 809.30(2)(g)(2), Stats.

(4) In addition to requesting transcripts, a person may request a copy of the circuit court case record from the clerk of circuit court. If the person does not ask for a public defender, that request should be made within 30 days of the filing of the notice of intent. If the person is denied representation, the request should be made within 90 days of the filing of the notice of intent. Rule 809.30(2)(f).

(5) The person must file a notice of appeal or motion seeking postconviction or postdisposition relief within 60 days of service of the transcript, or copy of the circuit court case record, whichever is later. Rule 809.30(2)(h), Stats.

(6) Unless an extension is requested by a party or the circuit court and granted by the court of appeals, the circuit court must decide a motion for postconviction or postdisposition relief within 60 days of filing or it is deemed denied. Rule 809.30(2)(i), Stats.

(7) The person must file a notice of appeal within 20 days of entry of the order on the postconviction or postdisposition motion. Rule 809.30(2)(j), Stats.

The court of appeals may extend each of these time limits. Rule 809.82(2)(b), Stats. However, an appeal from a judgment or order terminating parental rights or denying termination must be initiated by filing a notice of intent to appeal under Rule 809.107(2) within 30 days after the

entry of the judgment or order appealed from. This deadline cannot be extended. Sec. 808.04(7m), Stats. The notice of appeal in a termination of parental rights matter must be filed within 30 days after service of the transcript. Rule 809.107(5)(a), Stats. This cannot be extended.¹⁰

The state has 45 days to appeal in a criminal case or a case under chs. 48 or 938. Sec. 808.04(4), Stats.

VI. HOW TO FILE A NOTICE OF APPEAL

A notice of appeal must be filed with the clerk of the circuit court in which the judgment or order appealed from was entered. Rule 809.10(1)(a), Stats. A copy of the notice of appeal must be sent to the clerk of the court of appeals and a copy must be served (mailed or delivered by hand) on the opposing party. The notice of appeal must contain all of the following information: (1) the case name and number of the circuit court proceedings; (2) a description of the judgment or order appealed from including the date on which it was entered; (3) a statement whether the appeal is one of the types of cases specified in sec. 752.31(2) (small claims actions, municipal ordinance violations, violations of traffic regulations, cases under chs. 48, 51, 55, or 938, contempt, misdemeanors and cases involving civil forfeitures)¹¹; and

¹⁰ *Gloria A. v. State*, 195 Wis. 2d 268, 275-76, 536 N.W.2d 396, 399-400 (Ct. App. 1995).

¹¹ If the appeal is one of the types specified in Sec. 752.31, Stats., it will be decided by a single judge rather than by three judges. You may file a motion with the clerk

(4) a statement whether the appeal is one of those to be given preference in the circuit court or court of appeals by statute. Unless there is a specific statute giving preference to the appeal, do not state in the notice of appeal that the appeal is entitled to preference. The notice of appeal must be signed by the person filing it.

In an appeal from a judgment of conviction, (including a no-merit appeal) or other appeal where the procedures of Rule 809.30(2) apply (appeals in chs. 48, 51, 55 and 938 cases), the notice of appeal must also state when you received the last transcript or copy of the circuit court case record, if received later, the date of the postconviction or postdisposition order if a postconviction or postdisposition motion was filed, or whatever deadline the court of appeals established for the filing of the notice. A sample notice of appeal is attached.

At the same time that the notice of appeal is filed, the appellant must file with the court of appeals an original and one copy of a docketing statement on a form available from the circuit court clerk, and send a copy to the opposing party. A docketing statement need not be filed in an appeal in which a party appears pro se (represents himself or herself), in appeals under Rule 809.107 (termination of parental rights), in appeals under Rule 809.105 (parental consent prior to abortion),

(..continued)

of the court of appeals to have the appeal decided by a three-judge panel. You must do so at the same time the notice of appeal is filed if you are the appellant, or within 14 days of service of the notice of appeal if you are not the appellant. Rule 809.41(1), Stats.

in criminal cases, or in appeals of an order denying postconviction relief under Sec. 974.06, Stats. Rule 809.10(1)(d), Stats. The appellant must also file with the notice of appeal the \$195 fee for docketing the appeal and the circuit court clerk's filing fee, which varies from county to county. If you believe you are indigent (*i.e.* can't afford the fee), you should ask the clerk of the court of appeals to send you an affidavit of indigency, which you must complete and return. The clerk of the court of appeals determines indigency based on sec. 814.29, Stats., and the monetary guidelines established by the court. Internal Operating Procedures (IOP) VI(13).

A "prisoner," as defined in sec. 801.02(7)(a)2, Stats., who requests a waiver of the prepayment of this court's filing fee must follow the procedures in sec. 814.29(1m), Stats. Under sec. 801.02(7)(a)2, a "prisoner" means any person who is "incarcerated, imprisoned or otherwise detained in a correctional institution or who is arrested or otherwise detained by a law enforcement officer"

EXCEPT:

- a. a person committed under ch. 980, Stats.;
- b. a person seeking relief from a judgment or order terminating parental rights;
- c. a person seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an

action under Rules 809.30, 809.40, secs. 973.19 or 974.06, Stats.;

d. a person seeking discretionary review under Rule 809.50 of a nonfinal order that was entered in a ch. 980 proceeding or in a case specified under Rule 809.30 or 809.40;

e. a person who is not serving a sentence for the commission of a crime but who is detained, admitted or committed under chs. 51 or 55, or secs. 971.14(2) or (5).

If you are incarcerated, the clerk of the court of appeals, on request, will send you the affidavit of indigency designed specifically for use by prisoners. The affidavit should be completed and returned to the clerk. The prisoner must also submit a certified copy of their prison trust fund accounts for the six months immediately preceding their request, sec. 814.29(1m)(b)2, AND a copy of a written authorization to the Department of Corrections to forward payments to the court from the prisoner's accounts when required. Sec. 814.29(1m)(c)2. A form authorization may also be obtained from the clerk of the court of appeals. If the trust fund information is not provided to the court, the appeal will be dismissed without prejudice. Section 814.29(1m)(g). The court may also dismiss the appeal if the written authorization is not provided.¹²

Upon review of the affidavit of indigency and the trust fund account

¹² A prisoner need not submit the trust fund account information if he or she is in imminent danger of serious physical harm. A special affidavit of indigency should be requested from the clerk of the court of appeals.

statement, the court will determine the amount of the initial filing fee according to the requirements of sec. 814.29(1m)(d).

VII. CONFIDENTIALITY

If you are appealing in a case that is required by law to be confidential, for example, appeals under chapters 48, 938, 51 and 55 and paternity cases, you should not include an individual's complete name in any document filed with the court. You must refer to individuals only by their first name and first initial of their last name. This includes the notice of appeal and briefs. Rule 809.81(8), Stats. If you include portions of the record in an appendix to a brief, the portions should be reproduced so that only the first name and first initial of the last name is shown. Rule 809.19(2)(a), Stats. Please also note that a individual filing a notice of appeal or brief in a confidential case must include a complete signature on these documents.

VIII. STATEMENT ON TRANSCRIPT

Within 14 days of the filing of the notice of appeal, the appellant must file a "statement on transcript" with the court of appeals clerk informing the court whether a transcript is necessary for the appeal. Rule 809.11(4)(b), Stats. A "transcript" is a word-for-word typewritten account of what was said in court. If your case was
(..continued)

decided solely on briefs or other written documents and there was no hearing before a judge, state in the statement on transcript that a transcript is not necessary to prosecute the appeal. If you need to refer in your brief to testimony or argument that was transcribed in court, you must request the transcript and make arrangements with the court reporter for payment. If you request a transcript, the statement on transcript will not be accepted unless it is signed by the court reporter who is preparing the transcript. If you believe you are indigent and would like the transcript to be prepared at no cost to you, you should file a motion for waiver of the cost of preparing the transcript in the circuit court when you file your notice of appeal.¹³ In deciding whether to waive the fee for the preparation of transcripts, the circuit court will consider whether you are indigent and whether your appeal has arguable merit.

Id.

The statement on transcript must be filed with the court of appeals clerk, a copy must be sent to the circuit court clerk, and a copy must be served on the opposing party. Rule 809.11(4)(b), Stats. A statement on transcript form is available from the court of appeals clerk's office, and a copy is attached. If you fail to file a statement on transcript, the court will decide the appeal without a transcript and will reject arguments that rely on facts that would otherwise appear in a transcript.

¹³ *State ex rel. Girouard v. Cir. Ct. for Jackson County*, 155 Wis. 2d 148, 159-60, n.6, 454 N.W.2d 792, 797 (1990).

IX. THE RECORD

The record is a compilation of papers filed in the circuit court in your case. It will include the transcript, if one was prepared, as well as documents such as the complaint, any motions filed and any decisions, orders or judgments filed in the circuit court. The contents of the record are described in Rule 809.15(1), Stats. You need not tell the circuit clerk what to include in the record, although it is permitted, nor should you list in the statement on transcript documents that you want included in the record.

At least 10 days before the clerk of circuit court files the record with the court of appeals, the clerk will notify each party in writing that the record is available for inspection and will include a list of the papers constituting the record. You may ask the clerk to include items in the record which were filed in the circuit court but which the clerk has omitted from the record. For example, some clerks do not include circuit court briefs in the record. If you believe the record, once compiled, is defective, you may file a motion to correct the record with the court where the record is located. If you file a motion to correct the record while the record is still located in the circuit court, you should send a copy of the motion to the clerk of the court of appeals. Rule 809.15(4)(c), Stats. If you file a motion to correct the record with the court of appeals, you should also send a copy of the motion to the clerk of the circuit court. Rule 809.14(3)(c), Stats.

X. BRIEFS

A. THE APPELLANT'S BRIEF AND APPENDIX

When the clerk of the circuit court files the circuit court record in the court of appeals, the clerk of the court of appeals sends notice to all parties to the appeal, informing them that the record has been filed. The filing date, which is stated in the clerk's notice, triggers the time limit for filing the appellant's brief. You must file your appellant's brief with the court of appeals no later than 40 days after the record is filed. Rule 809.19(1), Stats. An appellant in a termination of parental rights case must file a brief no later than 15 days after the record is filed. Rule 809.107(6)(a), Stats.

The appellant's brief is a written document explaining why you are appealing and what you think was wrong with the circuit court's decision. Rule 809.19(1), Stats., describes the necessary parts of an appellant's brief. Your brief must have:

- (1) A table of contents and a table of any cases, statutes, and other legal authorities discussed in your brief (The cases must be listed in alphabetical order.);
- (2) A statement of the issues presented for review and how the circuit court decided them;
- (3) A statement whether oral argument is necessary and a statement whether the decision of the court of appeals should be published;

- (4) A statement of the case;
- (5) An argument section; and
- (6) A short conclusion that tells the court what relief you are seeking.

Rule 809.19(1)(d), Stats., specifically lists the information that must be included in your statement of the case. Generally speaking, the statement should explain to the court what the case is about and what happened in the circuit court. It should also present the facts from the circuit court record that are relevant to the issues to be decided on appeal. Every statement of fact must be accompanied by an appropriate reference to the record. For example, document #3, page 6 would be referred to as (Rec. 3, p.6). **You may not discuss facts that were never presented to the circuit court or that are not included in the record.** When referring to the parties in your brief, you should use their name, rather than referring to their party designation. For example, use “Jane Smith” not “the appellant.” Rule 809.19(1)(i), Stats.

The appellant must also file an appendix with the appellant’s brief. The appendix should include excerpts from the circuit court record that will assist the court of appeals when it is considering the issues raised in the appeal. Those excerpts typically include the findings or opinion of the circuit court; any oral or written decisions showing the circuit court’s reasoning regarding the issues; and any other relevant circuit court record entries. The appendix must include a table of

contents. Rule 809.19(2)(a). The appendix must also include a Certification, signed by the person filing the appendix, that the appendix meets the Content requirements of Rule 809.19(2)(a). (See sample form at the end of this handbook).

The appellant's brief cannot be longer than 50 typewritten pages if you are using a "monospaced font" (each character uses an equal amount of horizontal space) or 11,000 words if using a "proportional font" (horizontal space used by a character varies). However, only the statement of the case, the argument section, and the conclusion count toward the 50-page or 11,000 word limit. Rule 809.19(8)(c), Stats.

If you are using a "monospaced font" in your brief, the font must have 10 characters per inch, the text must be double-spaced, with 1.5 inch margin on left side and 1 inch margins on other 3 sides.

If you are using a "proportional font", you must use 13 point body text, have a maximum of 60 characters per line (approximately 2 inch margins on all sides), and leading of minimum 2 points (text will look single-spaced).

Each brief must be signed by the person filing it. Rule 809.19(1)(h), Stats. It must also contain a signed Certification that the brief meets the form and length requirements of Rule 809.19(8), Stats. (See sample form at end of this Handbook).

B. THE RESPONDENT'S BRIEF

After the appellant's brief is accepted for filing, the time for filing the respondent's brief begins to run. The respondent must file his or her brief within the later of: (1) 30 days from service of the appellant's brief (if you received the

appellant's brief in the mail, 3 more days are added); or (2) 30 days after the court accepts the appellant's brief for filing; or (3) 30 days after the date on which the record is filed in the clerk's office. Rule 809.19(3).

A respondent in a termination of parental rights case must file a brief within 10 days after service of the appellant's brief. Rule 809.107(6)(b), Stats. If you are the respondent, and oral argument is not scheduled in the appeal, your respondent's brief is your only opportunity to tell the court why the circuit court's decision should be affirmed or allowed to stand. The respondent's brief must have the same parts as the appellant's brief, **except** that a statement of the issues, a statement of the case, and an appendix are optional. Rule 809.19(3), Stats. The page limit or word limit for the respondent's brief is the same as that for the appellant's brief. A signature and a Certification as to form and length are required. If an appendix is filed with a respondent's brief, it must include a Certification, signed by the person filing the appendix, that the appendix meets the Contents requirements of Rule 809.19(2)(a).

C. THE APPELLANT'S REPLY BRIEF

The appellant's reply brief may be no longer than 13 pages if using a "monospaced font" or 3,000 words if using a "proportional font." A signature and a Certification as to form and length are required. Any facts or legal authority

discussed in your reply brief must include the appropriate citation or reference to the record. Rule 809.19(4)(b), Stats. The appellant's reply brief must be filed within the later of: (1) 15 days of service of the respondent's brief (if you received the respondent's brief in the mail, 3 more days are added); or (2) 15 days after the court accepts the respondent's brief for filing. A reply brief in a termination of parental rights case must be filed within 10 days of service of the respondent's brief. Rule 809.107(6)(c), Stats. If you are the appellant, and you do not intend to file a reply brief, you must file a written statement informing the court that a reply brief will not be filed.

D. NUMBER OF BRIEFS

You must file 10 copies of your brief with the court and serve the other party or parties with 3 copies.

If you have been found indigent under s. 814.29, Stats: If your case is one that will be decided by one judge (see list below), file 3 copies of your brief with the court of appeals. For all other cases, file 5 copies of your brief with the court. For all appeals, serve the other party or parties with 1 copy.

CASES DECIDED BY ONE JUDGE

- | | | |
|-----|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Any case under: | Chapter 48 (Children's Code)
Chapter 51 (Mental Health Act)
Chapter 55 (Protective Service System)
Chapter 799 (Small Claims Actions, including |
|-----|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|

evictions)

Chapter 938 (Juvenile Justice Code)

- (2) Traffic regulation cases
- (3) Municipal ordinance violation cases
- (4) Misdemeanor cases
- (5) Civil forfeitures
- (6) Contempt cases.

E. BRIEF COVERS

Each brief or appendix must have colored front and back covers. Rule 809.19(9), Stats. The appellant's brief must have blue covers; the respondent's brief red covers; and the reply brief, gray covers. If you file your appendix as a separate document, rather than attaching it at the back of your brief, its covers must be white.

The front cover of every copy of your brief must list:

- (1) the name of the court
- (2) the caption (case names) and number of the case
- (3) the court and the judge appealed from
- (4) the title of the document (for example Appellant's Reply Brief)
- (5) the name, address and State Bar Number of the lawyer filing the document (your name and address if you do not have a lawyer).

A brief must be securely bound on the left side with heavy strength staples, velobinding, or by means of the "perfect" (hot glue) binding method. Rule

809.19(8)(b)4, Stats.

F. FILING BRIEFS BY MAIL

The general rule is that a paper is “filed” when it is received by the clerk. Rule 809.80(3), Stats. A different rule, however, applies to briefs or appendices. A brief or appendix will be considered timely filed if, on or before the filing deadline, it is correctly addressed and either: (1) deposited in the United States mail for delivery to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage pre-paid; or (2) delivered to a third-party commercial carrier for delivery to the clerk within 3 calendar days. Rule 809.80(3)(b), Stats. A brief or appendix will be considered filed when mailed only if a certification or affidavit setting forth the date and manner by which it was mailed or delivered to the third-party commercial carrier is appended to it. Rule 809.80(4)(a), Stats. (See sample certification form at end of this Handbook). If a brief or appendix is received by the clerk’s office and it does not have a certification or affidavit of mailing appended to it, the date of filing for that document will be the date on which it was received by the clerk. Rule 809.80(4)(b), Stats. The date of mailing cannot be established by the date shown on a postage meter. Rule 809.80(4)(c), Stats.

If you are a person confined in an institution, for example, an incarcerated person or person committed under ch. 980, Stats., the following rule applies. A prose brief or appendix is timely filed if it is correctly addressed and delivered to the

proper institution authorities for mailing on or before the filing deadline. You must also append a certification or affidavit setting forth the date on which the brief or appendix was delivered to the proper institution authorities for mailing. Rule 809.80(3)(c), Stats.

XI. MOTIONS

A motion is a written request asking the court to make a special ruling in the appeal. Either the appellant or the respondent may file a motion with the court. For example, if you want permission to file and serve a lesser number of copies of briefs than Rule 809.19, Stats., requires, you would make your request by filing a motion (5 copies for a 3-judge case, 3 copies for a 1-judge case) with the court of appeals and by serving a copy of the motion on the other party to the appeal. Your motion should state the reasons why you are making a particular request. Rule 809.14, Stats. Be specific about what relief you need and why you need it. For example, if you need more time to file your brief, tell the court how much time you need. The court will inform you of its decision by mailing you and the other parties to the appeal an order granting or denying your motion. Do not submit a proposed order. A sample motion form is attached.

XII. THE DECISION PROCESS

Once briefs have been filed by both sides to the appeal, the case will be submitted to the court for decision. Because of the large number of cases filed in the court of appeals, the court cannot schedule oral argument in every case. In the majority of cases, the appeal will be decided upon review and consideration of the briefs and record alone, without an oral hearing before the judges. The judge or judges who consider your appeal will prepare a written opinion or order explaining the court's final decision. This decision will be mailed to you.

XIII. COSTS IN THE COURT OF APPEALS

Rule 809.25, Stats., explains the procedure for obtaining costs in the court of appeals. If you are the appellant and the court of appeals reverses the circuit court's judgment or order, you may recover your appeal costs from the respondent. If you are the respondent and the court dismisses the appeal or affirms the circuit court's judgment or order, you may recover your costs from the appellant. The court may decide not to award costs to either side if the circuit court's order is affirmed in part and reversed in part. Recoverable costs include:

- (1) Cost of printing and assembling the number of copies and appendices required by the rules, not to exceed the rates generally charged in Dane County, Wisconsin for offset printing of camera-ready copy and

assembling;

(2) Fees charged by the clerk of the court;

(3) Cost of the preparation of the transcript of testimony or for appeal bonds;

(4) Fees of the clerk of the circuit court for preparation of the record on appeal; and

(5) Other costs as directed by the court.

To recover costs under Rule 809.25, Stats., you must file a statement of costs no later than 14 days after the court issues its final decision in the appeal and serve the other side with a copy.

A prisoner who has received permission to commence an appeal or other action without paying costs or fees may later be required to pay the unpaid costs or fees out of his or her prison account if s/he loses on appeal. Sec. 814.29(3)(b), Stats.

If the court of appeals finds that an appeal or cross-appeal is frivolous, it shall award to the successful party costs, fees and reasonable attorney fees. A motion for costs and fees for a frivolous appeal must be filed no later than the filing of the respondent's brief or, in a cross-appeal, the cross-respondent's brief. Rule 809.25(3), Stats. Such a request must be made in a separate motion filed with the court; a statement in a brief asking that an appeal be found frivolous is insufficient.¹⁴

¹⁴ *Howell v. Denomie*, 2005 WI 81, ¶19, 282 Wis. 2d 130, 698 N.W.2d 621.

XIV. VOLUNTARY DISMISSAL

An appellant may dismiss his or her own appeal at any time prior to a decision without approval of the court or the respondent. If you decide to voluntarily dismiss your appeal, file a notice of dismissal in the court of appeals. If the appeal has not yet been docketed in the court of appeals, file the notice of voluntary dismissal in the circuit court. The notice of voluntary dismissal will not affect a cross-appeal that has been filed by the respondent. Rule 809.18, Stats.

XV. PUBLICATION

Any person may at any time request publication of an unreported court of appeals opinion. The request must be served on the parties and should state how the criteria for publication are satisfied. Rule 809.23, Stats. The court does not publish opinions in one-judge appeals, per curiams on issues other than appellate jurisdiction or procedure or summary disposition orders.

If the court releases a per curiam opinion that you believe should be published, you may request that the court withdraw the opinion and reissue it as an authored opinion that is recommended for publication. Rule 809.23(4)(c), Stats. This request must be filed within 20 days after the date of the opinion. You must send a copy of your request to all parties to the appeal. Rule 809.23(4)(d), Stats.

XVI. SANCTIONS

Failure to comply with any of the Rules of Appellate Procedure, or any order of the court, may subject you to sanctions, including monetary penalties or dismissal of your appeal. Rule 809.83(2), Stats.

XVII. SAMPLE FORMS (Notice of Appeal, Statement on Transcript, Motion, Form and Length Certification, Certification of Mailing, Front Brief Cover, Appellant's Appendix Certification)

SAMPLE FORM

Wis. Stat. § (Rule) 809.10
\$195.00 filing fee, Wis. Stat. § (Rule) 809.25

Circuit Court _____ County

NOTICE OF APPEAL

Case name from circuit court (Caption) _____ Circuit Ct. Case No. _____

To: (Circuit Court Official)
(Parties' Attorneys, Addresses)
(Clerk of Court of Appeals, P.O. Box 1688, Madison, WI, 53701-1688)

Notice is hereby given that _____ (name of party filing appeal) appeals to the Court of Appeals, District _____, from the _____ (whole)(part of)(final judgment and/or order) entered on (date) _____, in the Circuit Court for _____ County, the Hon. _____ (name) _____, presiding, in favor of _____ and against _____, wherein the court _____ (briefly describe the judgment or order being appealed)

NOTE: If this is an appeal under s. 809.30 or 809.32 also include the following, see Rule 809.10(1):

- If a postconviction or postdisposition motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.
- If a postconviction or postdisposition motion was filed, state the date of the order deciding the motion(s).
- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This (is)(is not) an appeal within Wis. Stat. § 752.31(2).

This (is)(is not) an appeal to be given preference in the circuit court or court of appeals pursuant to statute.

Date: _____

Signature, State Bar No., if applicable
Address, Telephone No.

SAMPLE FORM

Must be filed by appellant or cross appellant
with the Clerk of Court of Appeals within
14 days of filing notice of appeal
with the clerk of circuit court,
or within 5 days if an appeal under ch. 809.107. or
any other time frame established by Rule or Statute
A copy is sent to the Circuit Court Official.
Wis. Stat. § (Rule) 809.11(4) and (7),

COURT OF APPEALS OF WISCONSIN
DISTRICT _____

Case Name (Caption)

STATEMENT ON TRANSCRIPT

Appeal No. _____

To: Clerk of Court of Appeals (**the original**)
P.O. Box 1688
Madison, WI 53701-1688

Circuit Court Official (**a copy**)

Parties' Attorneys (**a copy**)

Check one:

- ☐ A transcript is not necessary for prosecution of this appeal.
- ☐ All transcripts necessary for this appeal are already on file and satisfactory arrangements with the court reporter(s) for service of a copy of the transcript(s) on the other parties have been made.
- ☐ Satisfactory arrangements with the court reporter(s) have been made for the filing and service of the following transcript(s), as certified below by the court reporter: **(Specify transcript(s) requested, for example, pre-trial proceedings, trial, post-trial proceedings, motion hearings.)**

Date: _____

Signature, State Bar No., if applicable
Address, Telephone No.

Complete bottom portion only if the transcript(s) is not already on file:

COURT REPORTER:

I certify that on _____ date _____ the above-designated portion(s) of the transcript(s) in _____ case name (caption) _____, appeal no. _____, were requested and arrangements made for the payment of the costs of the transcript. The transcript(s) will be filed with the circuit court and served on the parties, pursuant to Wis. Stat. § (Rule) 809.11(7), on or before _____ (date) _____.

Date: _____

Signature of Court Reporter
Court, Address, Telephone No.

NOTE: 809.11(7) requires a court reporter to return this signed statement to the appellant within 5 days after receipt.

SAMPLE FORM
General Motion Form
Wis. Stat. § (Rule) 809.14

COURT OF APPEALS OF WISCONSIN
DISTRICT _____

Case Name (Caption)

MOTION FOR

Appeal No. _____

(name of movant), (designate status, for example, appellant)

moves the court, pursuant to (specify statute or rule) _____ as follows:

(Indicate the relief or order sought, any applicable rules and/or statutes and any other information required by rule or statute, the grounds for granting, and (optional) state of the position of the other parties.)

Date: _____

Signature, State Bar No, if applicable
Address, Telephone No.

FORM AND LENGTH CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b) and (c) for a brief produced using the following font:

- ☐ Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is _____ pages. (**Sample font is Courier, 12 in WORD**)

- ☐ Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of a minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is _____ words. (**Sample font is New Times Roman, 13 point**)

Date: _____

Signature

Note: This form and length certification should be included at the end of each brief.

Note: See also Wis. Stat. §§ (Rules) 809.50(4), 809.51(4) for additional form and length requirements.

SAMPLE FORM

Wis. Stat. § (Rule) 809.80(4)

Effective 1/1/2003

CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious (please describe the class of mail utilized) on (insert date of mailing here). I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Date: _____

Signature: _____

OR

CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on (insert date of delivery to carrier here), this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: _____

Signature: _____

Note: You may also file an affidavit of mailing or delivery, setting forth the same information. See Rule 809.80(4), Stats.

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT ____

State of Wisconsin,
Plaintiff-Respondent,

v.

Appeal No. _____

Name of Party,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
AND ORDER DENYING POST-CONVICTION RELIEF
ENTERED BY THE CIRCUIT COURT FOR (name of county) COUNTY,
THE HONORABLE (name of judge) , PRESIDING

BRIEF OF _____

Name, State Bar No., if applicable
Firm Name
City, State, Zip Code
Telephone No.

BRIEF COVERS-FRONT AND BACK:

Appellant's Brief: **BLUE**

Respondent's Brief: **RED**

Reply Brief: **GRAY**

Respondent-Cross Appellant's Brief: **RED w/BLUE DIVIDER PAGE**

Reply-Cross Respondent's Brief: **GRAY w/RED DIVIDER PAGE**

Cross Appellant's Reply Brief: **GRAY**

Guardian ad Litem's Brief: **YELLOW**

Amicus Curiae's Brief: **GREEN**

Separate Appendix: **WHITE**

APPELLANT'S BRIEF APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains:

- (1) a table of contents;
- (2) relevant trial court record entries;
- (3) the findings or opinion of the trial court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated:

Signature:

Note: This certification should be appended to the appendix.